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# In the Supreme Court of the United States

OCTOBER TERM, 1970

No. [redacted] 163

THE CLEVELAND TRUST COMPANY and A. DEAN PERRY, Executors of the Estate of Helen Wade Greene, Deceased,

*Petitioners,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

## APPENDIX TO PETITION FOR CERTIORARI.

THOMAS V. KOYKKA,
CARLTON B. SCHNELL,
ARTER & HADDEN,
1144 Union Commerce Building,
Cleveland, Ohio 44115,
*Attorneys for Executors of the Estate of Helen Wade Greene, Deceased.*

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PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

## APPENDIX TO PETITIONERS' BRIEF.

## OPINION OF JUDGE KALBLEISCH OVERRULING GOVERNMENT'S MOTION AND UPHOLDING COUNTS II, III AND IV.

United States District Court for the Northern District of Ohio Eastern Division.
November 19, 1964.

KALBFLEISCH, *J.*

Plaintiffs filed a complaint seeking return of federal estate taxes and interest thereon which were allegedly illegally assessed and collected by the Government, which has now filed a motion to dismiss Counts II, III and IV of the complaint. For purposes of this motion the well-pleaded material allegations of the complaint will be taken as true. 2 *Moore's Federal Practice* (2nd Ed.), p. 2244.

Count II of the complaint alleges that on August 15, 1957, the decedent, Helen Wade Greene, established an irrevocable trust, conveyed property to the trust valued by the Commissioner of Internal Revenue at $1,322,580.70, and subsequently paid gift taxes of $317,994.29 in connection with this conveyance.

It is further alleged that decedent died suddenly and unexpectedly on December 25, 1958, and that after the original federal estate tax return was filed the Federal Estate Tax Examiner, in conformance with published procedures, notified the plaintiffs herein of certain proposed adjustments which would increase the estate tax by $565,980.20. The adjustments would allegedly reflect inclusion of the trust property into decedent's estate on the ground that she conveyed property to the trust in contemplation of her death.

It is further alleged that an informal conference was held and evidence was submitted by the executors, in conformance with published procedures, which culminated in an agreement between the executors and representatives of the Internal Revenue Service settling all controversies concerning the federal estate tax obligations of decedent's estate.

The complaint then states that the executors paid $86,089.24, the additional tax and interest agreed upon at the informal conference, and that approximately three months subsequent to this payment the Commissioner proposed to repudiate the agreement and claim that the decedent conveyed property to the trust in contemplation of her death. Thereafter the sum of $565,980.20 was assessed and collected from the estate.

Paragraph 37 of the complaint states:

"The Treasury Regulations and published procedures of the Commissioner of Internal Revenue pro-

> vide that in the event a taxpayer and the representatives of the Commissioner of Internal Revenue reach agreement in the Informal Conference for the settlement of issues in controversy between them, such agreement will not later be set aside except where 'substantial' and 'clearly defined error' appears.'"

It is plaintiffs' claim in Count II that the Commissioner failed to advise plaintiffs of any error in the informal agreement and that the Commissioner did not abide by the Treasury Regulations; therefore the assessment and collection are "erroneous and illegal" and retention of the sum is "wrongful."

Count III of the complaint alleges that the sum of "$565,980.20 was determined, assessed and collected from plaintiffs in violation of the Administrative Procedure Act, 5 U.S.C. Section 1001 et seq., and is void." It then alleges that retention of the sum is wrongful in that (1) the Commissioner failed to abide by Treasury Regulations, (2) the Commissioner failed to advise the executors of any "substantial" or "clearly defined error" or of any error in the agreement reached at the Informal Conference, and (3) the action of the Commissioner in refusing to honor the agreement, refusing to abide by the Treasury Regulations, and in assessing and collecting the additional tax and interest was "arbitrary, and capricious, and the result of an abuse of discretion."

The Government's suggested basis for dismissing Counts II and III is as follows:

> "The complaint in counts II and III fails to show that the 'agreement' reached in the informal conference or the waiver complied with the statutory requirements for closing agreements or compromises. * * * An 'agreement' or waiver which does not meet those requirements does not bind the Government. [Cases cited.]

* * * * *